

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE STATE OF COLORADO,

BAP No. CO-12-094

Alleged Debtor.

DAVID LEE COLLINS and JOHN
BOYD BOWRING,

Bankr. No. 12-28838
Chapter 7

Appellants,

v.

DISMISSAL ORDER

STATE OF COLORADO, COUNTY
OF EL PASO, COUNTY OF
LARIMER, CITY OF COLORADO
SPRINGS, CITY OF FOUNTAIN, and
CITY OF FORT COLLINS,

December 6, 2012

Appellees.

Before THURMAN, Chief Judge, NUGENT, and JACOBVITZ, Bankruptcy
Judges.

On November 13, 2012, this Court entered an Order to Show Cause Why Appeal Should Not Be Considered For Dismissal As Untimely (“OSC”), because the pro se Appellants David Lee Collins and John Boyd Bowring filed their Notice of Appeal more than fourteen days after the entry of the order appealed. *See* Fed. R. Bankr. P. 8001(a). On November 26, 2012, Appellants filed a Memorandum of Law in response to the OSC (the “Response”).

Background

This is an appeal from the bankruptcy court’s September 11, 2012, Order Striking Petition for Involuntary Bankruptcy (the “Appealed Order”). On September 24, 2012, Appellants filed a motion for Relief From Judgement (sic)

Rule 60(a)(b)(4)(6) (the “Rule 60 Motion”) from the Appealed Order. The Rule 60 Motion was subsequently denied by the bankruptcy court on October 12, 2012, thereby triggering Appellants’ time to appeal. *See* Fed. R. Bankr. P. 8002(b). Appellants filed their notice of appeal from the Appealed Order on November 7, 2012.

Discussion

Rule 8002(a) of the Federal Rules of Bankruptcy Procedure provides that a notice of appeal must be filed within fourteen (14) days after entry of the order being appealed. Further, Rule 8002(b)(4) of the Federal Rules of Bankruptcy Procedure provides that a timely filed Bankruptcy Rule 9024 motion that is filed no later than fourteen (14) days after the judgment or order from which an appeal is taken tolls, or suspends, the time period for filing a notice of appeal until an order deciding the last such motion outstanding is entered. Then the appeal period resumes. *See* Fed. R. Bankr. P. 8002(b)(4). Bankruptcy Rule 9024 makes Civil Rule 60 applicable in bankruptcy cases and proceedings. Thus, for a “Rule 60” motion to toll the time to file the notice of appeal, the motion must be “filed no later than 14 days after the entry of judgment.”

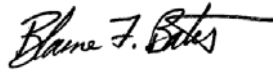
In this case, the bankruptcy court’s order denying the Rule 60 Motion was entered on October 12, 2012, but the Appellants’ notice of appeal was not filed until November 7, 2012, twenty-six (26) days later. Thus, the Appellants’ notice of appeal is not timely, and, absent an extension of the 14-day period by the bankruptcy court pursuant to Federal Rule of Bankruptcy Procedure 8002(c), this Court lacks jurisdiction over the appeal. *Deyhimy v. Rupp (In re Herwit)*, 970 F.2d 709, 710 (10th Cir. 1992); *Furst v. Furst (In re Furst)*, 206 B.R. 979, 980 (10th Cir. BAP 1997).¹

¹ We note that Appellants’ November 7, 2012, notice of appeal was captioned for the United States Court of Appeals of the Tenth Circuit. Appellants
(continued...)

Accordingly, it is HEREBY ORDERED that:

- (1) This appeal is DISMISSED for lack of jurisdiction.
- (2) All deadlines in this appeal are VACATED.

For the Panel:



Blaine F. Bates
Clerk of Court

¹ (...continued)
contemporaneously filed with the bankruptcy court a similarly captioned Motion to Venue, which was transmitted to this Court on November 29, 2012. To the extent this Motion to Venue seeks to directly appeal the Appealed Order to the Tenth Circuit Court of Appeals, this request must also be denied as untimely. *See* Fed. R. Bankr. P. 8001(f)(1) (“A certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) shall not be effective until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.”).